

**In the United States District Court
For the Southern District of Georgia
Waycross Division**

FERNANDO ARVIZU DIAZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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CIVIL ACTION NO.: 5:16-cv-81

(Case No.: 5:08-cr-7)

ORDER

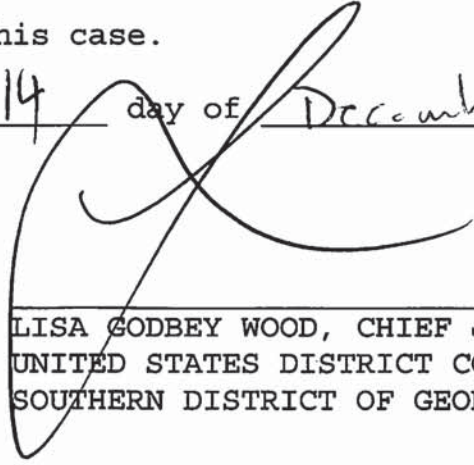
After an independent and *de novo* review of the record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, (dkt. no. 4), to which Objections have been filed.¹ Fernando Arvizu Diaz's ("Diaz") Objections are not responsive to the Magistrate Judge's Report and Recommendation.

Accordingly, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation, (dkt. no. 4), as the opinion of the Court.

¹ Although Diaz labeled his pleading as a "Motion for Reconsideration", (dkt. no. 5), the Court construes Plaintiff's Motion as Objections to the Magistrate Judge's Report and Recommendation. "Federal courts sometimes will ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category." Retic v. United States, 215 F. App'x 962, 964 (11th Cir. 2007) (quoting Castro v. United States, 540 U.S. 375, 381 (2003)). Federal courts "may do so in order to avoid an unnecessary dismissal, to avoid inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a *pro se* motion's claim and its underlying legal basis." Id. (quoting Castro, 540 U.S. at 381-82).

Consequently, the Court **DISMISSES** Diaz's Motion to Vacate, Set Aside, or Correct his Sentence, filed pursuant to 28 U.S.C. § 2255, and **DENIES** Diaz leave to proceed *in forma pauperis* on appeal and a Certificate of Appealability. The Court **DIRECTS** the Clerk of Court to enter the appropriate judgment of dismissal and to **CLOSE** this case.

SO ORDERED, this 14 day of December, 2016.



LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA